

The Honorable Barbara J. Rothstein

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CARLSON,

Plaintiff,

v.

STATE FARM FIRE & CASUALTY  
COMPANY

Defendant.

Civil Action No. 3:20-cv-847-BJR

ORDER DENYING PLAINTIFF’S MOTION  
FOR ATTORNEY’S FEES

**I. INTRODUCTION**

Plaintiff Lindsay Carlson filed this lawsuit against Defendant State Farm Fire & Casualty Company (“State Farm”) in June 2020, alleging claims for breach of contract and violation of the Washington Consumer Protection Act. Dkt. No. 1. Currently before the Court is Plaintiff’s motion for attorney’s fees, which State Farm opposes. Dkt. Nos. 23 and 26. Having reviewed the motion and opposition thereto, the record of the case, and the relevant legal authorities, the Court will deny the motion. The reasoning for the Court’s decision follows.

## II. BACKGROUND

On November 18, 2018, Plaintiff's home, which was insured by State Farm, was destroyed by fire. Dkt. No. 14 at ¶ 9. Plaintiff made a claim for damages and State Farm made payments in the amount of \$171,824.80 for the dwelling and \$124,394.82 for personal property. *Id.* at ¶ 12. However, a dispute arose between the parties regarding amounts owed under the policy's "Ordinance and Law" provision as well as the value of certain additional personal property. *Id.* at ¶ 14. Important to the instant motion, State Farm did not dispute that coverage existed under the "Ordinance and Law" provision of the policy, nor did it dispute that coverage existed for the additional personal property; rather, State Farm disputed the value of Plaintiff's claims. *See, e.g.*, Dkt. No. 27, Ex. F.

Attempts to resolve the dispute short of litigation failed and Plaintiff instituted this lawsuit in June 2020. Dkt. No. 1. However, the parties continued to negotiate and were eventually able to resolve their differences regarding the value of Plaintiff's outstanding claims. Dkt. No. 27, Ex. L. The only outstanding issue between the parties is Plaintiff's instant motion in which she requests that this Court order State Farm to pay her attorney's fees.

## III. DISCUSSION

In the seminal case, *Olympic Steamship*, the Washington Supreme Court held that an insured may recover reasonable attorney's fees where an insurer "compels the insured to [take] legal action to obtain the full benefit of his insurance contract, regardless of whether the insurer's duty to defend is at issue." *Olympic S.S. Co. v. Centennial Ins. Co.*, 811 P.2d 673, 681 (Wn. 1991). Three years later the Washington Supreme Court clarified that an award of attorney's fees is appropriate only when coverage under the policy was in dispute. *Dayton v. Farmers Ins. Group*, 876 P.2d 896, 898 (Wn. 1994). In the decades since, "Washington courts have unequivocally recognized ... [that]

1 *Olympic Steamship* fees are awarded ‘only when an insurer wrongfully denied ‘coverage’ as  
2 distinguished from the situation where ‘coverage’ is conceded but the claim fails or recovery is  
3 diminished on its factual merits.’” *Schreib v. American Family Mut. Ins. Co.*, 129 F. Supp. 3d 1129,  
4 1142 (W.D. Wash. 2015) (quoting *Greengo v. Pub. Emps. Mut. Ins. Co.*, 959 P.2d 657, 665 (Wn.  
5 1998)); *see also*, *Gossett v. Farmers Insurance*, 948 P.2d 1264, 1278 (Wn. 1997) (“[T]he *Olympic*  
6 *[Steamship]* rule applies only to disputes over coverage, and not to disputes over the amount of a  
7 claim.”).

9 Here, State Farm did not dispute that coverage existed under the insurance policy; it  
10 disputed the amount owed under the “Ordinance and Law” and “Personal Property” provisions of  
11 the policy and requested that Plaintiff provide documentation to substantiate her claims. After much  
12 back and forth between the parties (documented in correspondence) and an appraisal, the parties  
13 were able to reach an agreement on the outstanding claims. This is not a situation that warrants an  
14 award of attorney’s fees under *Olympic Steamship*. Indeed, doing so is prohibited by *Dayton* and  
15 its progeny.

17 Plaintiff attempts to circumvent this obstacle by arguing that State Farm denied that  
18 ordinance law coverage and replacement cost coverage existed under her policy. Plaintiff is  
19 mistaken. This Court has reviewed the correspondence between the parties regarding these claims  
20 and it is clear that although State Farm challenged the validity of some of Plaintiff’s claims under  
21 these provisions, it did not deny that the policy afforded coverage under either provision. For  
22 instance, a local ordinance required Plaintiff to conduct wetland abatement before rebuilding her  
23 home after the fire. When Plaintiff submitted a reimbursement claim to State Farm for the cost of  
24 the abatement, State Farm conceded coverage under the “Ordinance and Law” provision of the  
25 policy but disputed a portion of the cost because it was associated with destruction that was done  
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1 to the wetlands before the fire destroyed Plaintiff's home. Plaintiff ultimately agreed, reduced her  
2 reimbursement request accordingly, and State Farm paid the claim. *See* Dkt. No. 29 at ¶ 4.

3 As for Plaintiff's replacement cost claims, State Farm did not deny coverage; rather, it  
4 requested that Plaintiff provide documentation to substantiate her claims, something well-within its  
5 rights under the terms of the policy. *See, e.g.*, Dkt. No. 29, Ex. B (requesting documentation to  
6 substantiate that Plaintiff "in fact lost 10,000 cookie presses and 200 adult costumes"); Ex. G  
7 (requesting that Plaintiff clarify which receipts apply to which items on a contents list); Ex. L  
8 (stating the previously provided receipts for the "replacement cost personal property" was "not in  
9 a legible format"). State Farm did not dispute that coverage existed for these claims; State Farm  
10 simply requested substantiation for the value of the claims.  
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12 Plaintiff's reliance on *Leingang v. Pierce County Medical Bureau* is misplaced. 930 P.2d  
13 288 (Wn. 1997). Plaintiff argues that *Leingang* stands for the proposition that "[a]ll that is necessary  
14 to recover attorney fees under [*Olympic Steamship*] is that the insurer compels the insured to assume  
15 the burden of legal action to obtain the full benefit of the insurance contract." Dkt. No. 23 (quoting  
16 *Leingang*, 930 P.2d at 296). Plaintiff takes this statement out of context. When making this  
17 statement, the *Leingang* Court was clarifying that, unlike an award of attorney's fees under the  
18 Washington Consumer Protection Act, an award for attorney's fees under *Olympic Steamboat* does  
19 not require a finding of bad faith. 930 P.2d at 296. Read in context, however, it is clear that the  
20 *Leingang* Court goes to great lengths to clarify that *Olympic Steamship* fees are available only in  
21 cases where coverage is disputed. *Leingang*, 930 P.2d 288, 294 (citing to a string of cases for the  
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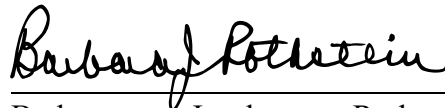
1 proposition that “no fees [can be] awarded when the insurer does not dispute coverage but merely  
2 disputes the value of the claim”).<sup>1</sup>

3 Thus, because this case involved a disagreement as to the value of Plaintiff’s claims as  
4 opposed to coverage, Plaintiff is not entitled to an award of attorney’s fees under *Olympic*  
5 *Steamship*.  
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#### 7 IV. CONCLUSION

8 For the foregoing reasons, Plaintiff’s Motion for Attorney’s Fees (Dkt. No. 23) is HEREBY  
9 DENIED.

10 Dated this 6th day of August 2021.

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13 Barbara Jacobs Rothstein  
14 U.S. District Court Judge  
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22 <sup>1</sup> Plaintiff also cites to *Gossett v. Farmers Ins. Co. of Washington*, 948 P.2d 1264 (Wn. 1997) and  
23 *McGreevy v. Oregon Mut. Ins. Co.*, 904 P.2d 731 (Wn. 1995). In both, the Washington Supreme  
24 Court is clear that attorney’s fees are available under *Olympic Steamboat* only if the insurer disputes  
25 coverage. *Gossett*, 984 P.2d at 1274, 1278 (“An insured who prevails in a dispute over coverage is  
26 entitled to attorney fees from the insurer”... “We held in *Dayton* that the *Olympic [Steamship]* rule  
27 applies only to disputes over coverage, and not to disputes over the amount of the claim.”);  
*McGreevy*, 904 P.2d 738 (“In our opinion, when an insurer unsuccessfully contests coverage, it has  
placed its interests about the insured. Our decision in *Olympic Steamship* remedies this inequity by  
requiring that the insured be made whole.”).